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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1934.

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CHARLES ELMORE CROPLEY
CLERK

No. 345

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, AS AND CONSTITUTING THE FLORIDA RAILROAD COMMISSION, ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT AS TO JURISDICTION.

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INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining the jurisdiction	1
Date of decree sought to be reviewed and date of application for appeal	2
Nature of the case and of the rulings of the court	2
Cases sustaining jurisdiction	15

Table of Cases Cited.

Arkadelphia Milling Co. v. St. L.-S. W. R. R. Co., 249 U. S. 134	15
Baltimore & Ohio R. R. Co. v. United States, 279 U. S. 781	15
Florida v. United States, 282 U. S. 194	15
Florida v. United States, 30 F. (2d) 116	3
Florida v. United States, 31 F. (2d) 58	3
Georgia Public Service Commission v. Atlantic Coast Line R. R. Co., 146 I. C. C. 717	2

Statutes Cited.

Judicial Code, Sec. 238 as amended by Act of February 13, 1925 (c. 229, 43 Stat. 938, 28 U. S. C. A. 345)	1, 2
Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220, 28 U. S. C. A. 47a)	2

UNITED STATES DISTRICT COURT

In and for the Northern District of Georgia, Atlanta Division.

In Equity.

Consolidated Cause No. 514.

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, AS AND CONSTITUTING THE FLORIDA RAILROAD COMMISSION: BROOKS-SCANLON CORPORATION, CUMMER CYPRESS COMPANY, WILSON CYPRESS COMPANY AND WILSON LUMBER COMPANY OF FLORIDA; AND E. S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, AS AND CONSTITUTING THE FLORIDA RAILROAD COMMISSION, FOR THE USE AND BENEFIT OF THE SEVERAL SHIPPERS NAMED IN PARAGRAPH III OF THE FINAL DECREE OF RESTITUTION,

Complainants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

Defendants.

JOINT AND SEVERAL STATEMENT BY COMPLAINANTS OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON CROSS-APPEAL THE ABOVE ENTITLED CONSOLIDATED CAUSE.

I.

The Statutory Provisions Sustaining the Jurisdiction.

The complainants, as appellants, jointly and severally, rely upon Section 238 of the Judicial Code, as amended by

the Act of Congress of February 13, 1925 (Chapter 229, 43 Stat. 938, 28 U. S. C. A. 345), and also the Urgent Deficiencies Act of October 22, 1913 (Chapter 32, 38 Stat. 219, 220, 28 U. S. C. A. 47a) as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled consolidated cause upon appeal.

II.

The Decree Sought to Be Reviewed.

The decree appealed from is dated April 14, 1934, and entered of record April 17, 1934. The petition for appeal is presented June —, 1934.

III.

Nature of the Case and of the Rulings of the Court.

1. The three constituent bills in this cause were separately instituted for the purpose of enjoining, setting aside and annulling an order of the Interstate Commerce Commission, dated August 2, 1928, and thereafter amended in certain particulars, and to become effective February 8, 1929, in a certain proceeding had before the Interstate Commerce Commission in its Docket No. 18364, entitled, "Georgia Public Service Commission, complainant, *versus* Atlantic Coast Line Railroad Company, defendant" (reported in 146 I. C. C. 717), which order required the said Railroad Company to establish, put in force and maintain in intrastate commerce within and throughout the State of Florida certain rates for the transportation of logs, which rates were approximately double the rates then existing in said State for such transportation service under the authority of the State of Florida. The three causes were heard together before the specially constituted District Court comprised of Circuit Judge Walker and District Judges Dawkins and Sibley. Upon hearing and rehearing said trial

Court sustained the order of the Interstate Commerce Commission and denied the relief sought in said bills of complaint, and dismissed said bills. (State of Florida *versus* United States, 30 F. (2d.) 116.) (State of Florida *versus* United States, 31 F. (2d) 58.) The Atlantic Coast Line Railroad Company had intervened as a defendant in defense of the order of the Interstate Commerce Commission.

2. The complainants prosecuted their appeals to the Supreme Court of the United States from the said decrees of the District Court, and on January 5, 1931, said Supreme Court by its opinion and order did order, adjudge and decree that the said decrees of the District Court be reversed and that the portion of the order of the Interstate Commerce Commission under review in said Supreme Court with respect to intrastate rates be set aside, and did order that the said cause be remanded to the said District Court for further proceedings in conformity with said opinion of said The Supreme Court.

3. On, to wit, January 23, 1931, and prior to the coming down of the mandates of said Supreme Court, the defendant Atlantic Coast Line Railroad Company did tender for filing in said cause in said Supreme Court a certain motion in which it prayed, for the reasons set forth in said motion:

(a) That said Supreme Court enter such order as it might deem wise either staying the mandates in said Supreme Court until the Interstate Commerce Commission should have acted in said cause in the light of said opinion of said Supreme Court, or until the said Supreme Court for cause shown should otherwise direct, or,

(b) That said Supreme Court in sending down its mandate to said District Court, direct said District Court to maintain the status as to the said intrastate rates then existing until the said Interstate Commerce Commission

should have acted or until said District Court for cause shown should have otherwise ordered.

On the same day the Georgia Public Service Commission did tender for filing in the Supreme Court a motion of substantially the same import as the motion of said Railroad Company.

The appellants objected to the filing and granting of said motions, and the Supreme Court by its order of January 26, 1931, denied them.

4. On February 19, 1931, the mandates of the Supreme Court were filed in the District Court in each of the constituent causes. The mandates, among other things, commanded the District Court that such further proceedings be had in such causes respectively in conformity with the said opinion and decree of said Supreme Court, as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

5. On February — and March 7, 1931, respectively, the complainants respectively filed in said constituent causes their motions and amendments thereto in which they moved for a decree in conformity with said mandates, and setting aside the decrees of said District Court which the said Supreme Court had ordered to be reversed, and enjoining, setting aside and annulling so much of said order of the Interstate Commerce Commission as sought to require the said Railroad Company to establish, put in force and maintain said intrastate rates.

And the complainants, the State of Florida and its said Railroad Commission on behalf of all shippers and consignees respectively, in their said motion in constituent cause No. 514, and the complainants, Brooks-Scanlon Corporation et al. and Wilson Lumber Company of Florida, in their respective motions in constituent causes No. 511 and No. 512 respectively, on their own behalf, did further move

the District Court to render a decree against the said defendant Railroad Company to restore to such shippers, consignees and complainants, respectively, the amounts paid by them respectively to said defendant because of the erroneous decrees theretofore entered by the court in said constituent causes. And the complainants, among other things, averred that before the reversal of the erroneous decrees which the District Court had entered instead of the decree which the Supreme Court of the United States had said that it should have entered in the first instance, the said shippers and the complainants had been compelled to pay and did pay to the defendant from the effective date of said order of the Interstate Commerce Commission, to wit, February 8, 1929, for the transportation of logs, the rates so prescribed by said unlawful and invalid order of the Interstate Commerce Commission; and that such rates were in excess of the said lawful State rate (to-wit, the rate known as the Cummer Scale), which was in force and effect for the transportation of such logs at the time when such invalid and unlawful order of the Interstate Commerce Commission became effective, and which said invalid and unlawful order purported to supersede. And that if said District Court had entered in the first instance the decree which the Supreme Court of the United States had decreed that the District Court should have entered, such shippers and consignees respectively would have paid to the defendant carrier for the transportation of such logs in intrastate commerce only said lawful State rates, and that the said intervener and defendant had accordingly benefited from said erroneous decrees in the amounts and to the extent of such excess. And that such shippers and consignees respectively having been compelled by said decrees of said District Court to pay such excess the complainants were now entitled to restitution, with interest.

And likewise, in and by their said motions, respectively,

said complainants did further move the District Court generally to retain jurisdiction of the causes respectively and of the parties respectively, to the end that such other and further proceedings might be had, and such further orders and decrees might be entered with respect to restitution, costs and any and all other proper matters as are according to right and justice and the laws of the United States.

6. That on March 7, 1931, the said defendant Railroad Company did file in said constituent causes in said District Court its responses to said motions of the complainants respectively in which, for reasons therein set forth it prayed, among other things, in effect as follows:

(a) That the mandate of said Supreme Court be not entered in said District Court, but the cause proceed in conformity with the opinion and decree of the said Supreme Court to the ascertainment of that which should be done, according to right and justice, in accordance with the laws of the United States, and upon such ascertainment such mandate be entered and decree be entered; and

(b) that if the mandates of the said Supreme Court be then entered that such orders and proceedings be had as would preserve the status while the District Court proceed to determine in conformity with said opinion and decree of the said Supreme Court that which was right and just to the parties and to the respondent, and that upon such ascertainment the said District Court enter its orders and decrees accordingly;

(c) that it be determined by the District Court that said defendant was under no obligation to make restitution:

(d) that the several motions filed by the complainants be consolidated for trial and that the complainants be enjoined from undertaking to put in force and effect the State rates (known as the Cummer Scale) which the said order

of the Interstate Commerce Commission had sought to supersede;

(e) that the District Court determine that said Cummer Scale of rates is unreasonable, unjust and confiscatory and that its application be enjoined;

(f) to the end that a multiplicity of suits be prevented that all persons at interest be enjoined from undertaking to enforce any overcharges or claims of restitution against the defendant, except in said proceedings and before the District Court, under such circumstances as the District Court might deem proper;

(g) that it be determined that the Cummer Scale of rates was not in force at any time on or after February 8, 1929, for the reasons therein set forth;

(h) that the District Court enter such other and further orders as might be meet and proper to the end that right and justice be done in said causes in accordance with the opinion of the Supreme Court and the mandates issued therefrom; and for general relief. And on March 7, 1931, the complainants respectively did file in said constituent causes their said motions to strike the said responses of the defendant railroad company, for the reasons therein set forth.

7. On March 7, 1931, the said District Court did enter in said constituent causes its decree in which it ordered in effect (a) that the mandates of the Supreme Court be made the judgment of the District Court, and that the same be entered in the minutes of the District Court, and did enjoin, annul and set aside the said portion of the order of the Interstate Commerce Commission which was under review, and did declare that the same was invalid and unlawful; and (b) that in further pursuance of said mandates directing further proceedings, the pleadings filed in said

causes by the complainants seeking restitution and those opposing the same filed by the defendant and seeking equitable relief were reserved for further consideration, the Court retaining jurisdiction for such and other proper purposes.

8. On March 16, and April 14, 1931, divers amendments were filed in said constituent causes by the said defendant to its said responses and afterwards divers motions to strike and/or dismiss said amendments were filed by the complainants respectively.

9. On July 31, 1931, said District Court made and entered its interlocutory order in which it adjudged in effect, among other things:

First. That said District Court was without jurisdiction to enjoin rates established by the State of Florida for intrastate traffic or to revise or amend the same, and thereupon by its said order all prayers of the defendant railroad to such intent were dismissed and stricken without prejudice to any relief it might elsewhere be entitled to seek.

Second. The District Court having recited the entry of its erroneous judgments dated January 17, 1929, and April 17, 1929, and the reversal of them by the Supreme Court, and the entry by the District Court of its said order dated March 7, 1931, upon the mandate of the Supreme Court, the District Court did thereupon appoint a special master and direct him, among other things

> "to ascertain and report to this Court the sums severally due to the complainants or other persons represented by the Florida Railroad Commission in this suit by the Atlantic Coast Line Railroad Company as overcharges exacted between said dates by virtue of the said invalid order of the Interstate Commerce Commission, as measured by the difference between the

amount collected and the established lawful rate in force at the time each shipment was made, as the Master may find it to have been."

10. Brooks-Scanlon Corporation et al., complainants in constituent cause No. 511, and Wilson Lumber Company of Florida, complainant in constituent cause No. 512, each in its own behalf, respectively, and the State of Florida and its Railroad Commission, complainants in constituent cause No. 514, in behalf of divers other shippers and consignees, filed with said Master claims, the extent of which was the difference between the transportation charges for the transportation of logs, exacted by the defendant railroad company of such shippers and consignees respectively under color of said unlawful order of said Interstate Commerce Commission on the one hand, and the transportation charges computed upon the lawful State rate (to wit, said Cummer Scale), which was in force and effect at the time that said unlawful order of the said Interstate Commerce Commission became effective and which the said invalid and unlawful order of said Commission purported to supersede, on the other hand.

That the Master over the objection of the complainants, respectively, admitted evidence adduced by the defendant railroad company upon the justness and reasonableness of the said Cummer Scale of rates, and afterwards the Master filed in the District Court his report in which, among other things, he found in effect:

(a) That during said restitution period said Cummer Scale was *prima facie* "the established lawful rate" for the transportation of logs in intrastate commerce in Florida, but that under Florida law, being only *prima facie* evidence, the defendant Railroad Company had the right to assert in these restitution proceedings that said rate was unjust, unreasonable, non-compensatory and confiscatory.

(b) That the Cummer Scale was unjust and unreasonable and unenforcible under the Florida statutes, and was unremunerative and invalid under the Constitutions of the State of Florida and of the United States, and on that account was not the "established lawful rate."

(c) That during said restitution period there was no "established lawful rate" but that the common law obligation to carry at a reasonable rate was the only applicable limit of lawful charges, and that the District Court had jurisdiction to award restitution upon that basis.

(d) That not having been commissioned by his order of appointment to inquire into what would have been a reasonable charge, he made no findings thereon.

11. Exceptions to said Master's report were filed by the said complainants and the said defendant respectively. And said cause was heard by said District Court upon such exceptions. And the contentions of the complainants were and the said District Court found them so to be, that they were severally entitled to have restitution measured by the Cummer Scale, it being a rate voluntarily established, and approved by the said Florida Railroad Commission, the District Court having no power to go behind it; but if not, that the Master should be directed to measure it by the said common law standard.

12. On January 30, 1933, the District Court filed its opinion and interlocutory order in which it found and adjudged the following things in effect, among others:

(a) That said Cummer Scale was *prima facie* the "lawful state rate" but under Florida law was *prima facie* only, and that with respect to the transportation charges exacted in the past the justness and reasonableness of it and whether it was remunerative or confiscatory might be tested in a litigation between shipper and carrier.

(b) That the Cummer Scale was unjust and unreasonable, and under Florida law was unenforcible as the measure of restitution.

(c) That the Cummer Scale was confiscatory and invalid under the Constitutions of the State of Florida and of the United States, and that the constitutional invalidity was fatal to its use in measuring an equitable restitution.

(d) That the court did grant restitution, "but not of the blind and instantaneous sort which settles nothing, but we condition it on a full inquiry which will do justice and give full and final relief to the parties."

> "There remains only the common law standard of reasonableness as fixed by the court to be applied. Its application is not rate-making. We have held that we have no jurisdiction in this case to enjoin or set aside a state rate. A Commission rate is a legislative act made through a deputy a law of commerce having only a prospective operation. The ascertainment of a past overcharge is a judicial act in which law is applied, not made, (citing cases). This latter is the thing we will require the master to do on a re-reference, wherein he may consider as evidence for comparison other rates established by due authority as well as other evidence hitherto taken by him and such as may hereafter be offered on this point by either party. It is the ancient issue of quantum meruit. Other issues already decided by him stand closed. An order of re-reference will be taken accordingly."

And thereupon, on, to-wit, January 30, 1933, the District Court did enter its interlocutory order in which it overruled the exceptions to said Master's report, and confirmed the same so far as it had gone, and except as modified by the said District Court in its said conclusions of law and fact, and re-referred the said cause to the said special master, holding, among other things, that:

> "Under the special circumstances of this case we adjudge that the claimants of restitution should have

> the same only upon condition that they submit to an investigation of the true rights of the carrier to collect for the transportation of their logs during the period covered by the restitution, and submit to such an adjudication as will justly and finally settle the accounts between such claimants and the carrier. To this end we recommit this matter to the master, with direction that he ascertain whether the charge made by the carrier for transportation in each instance was a reasonable one as measured by common law standard, and if not, what was the reasonable charge to be made, and that he measure and award to each claimant restitution accordingly. The master may consider all evidence hitherto taken by him bearing upon the reasonableness of the charge to be made, and may receive such additional evidence as either party may desire to offer thereon."

Shortly after the said Order of Re-reference was entered by the said District Court, the said Master held a series of hearings. At the beginning of the first of such hearings the complainants announced that they were proceeding under the said Order of Re-reference and according to said order without waiving any errors which the District Court might have made therein, and that they would conform to said Order of Re-reference made by said District Court with the right to appeal therefrom. And thereupon and thereafter the complainants and the defendant respectively did adduce before the said Master evidence upon the issues defined in the said Order of Re-reference. Afterwards the Master filed his report under said Order of Re-reference, in which the Master found, among other things, in effect the following:

(a) That the record showed that the cost of transporting the logs when the shipments were made in trainloads (under the circumstances under consideration, to-wit, upon regular schedule from a single point of origin to a single

destination) was less than the cost of transporting single carload shipments and less when the shipments were made (to a single destination) not in trainloads but in quantities substantially above single carloads.

(b) That while the Master took into account the volume and cost of the trainload and other heavy movements in determining what would be proper charges applicable alike to all shipments, the Master felt it his duty to fix one scale of charges applicable alike to all shipments, according to weight and distance.

(c) That the charges made by the defendant Railroad Company for shipments of logs over said railroad in Florida during said restitution period were not proper or lawful charges, but were higher than proper or lawful charges.

(d) That the total principal amount that should be recovered by and for the benefit of the complainants and the claimants for whose benefit claims had been filed with said Master was the sum of $99,941.77 principal amount, or 34% of the total or aggregate principal amount claimed by and on behalf of said claimants respectively.

(e) That each claimant by or on behalf of whom a claim had been filed should recover as principal 34% of the principal amount of his claim, and of each item comprehended therein, together with interest computed at the rate of 8% per annum upon the principal sum of each such item, from and after the time of the making of the shipments out of which such item arose.

The claimants and the defendant Railroad Company, respectively, filed exceptions to said Master's report, and final hearing was had by said District Court.

And afterwards, on, to-wit, January 26, 1934, the District Court did file in said causes its opinion and findings

in which it overruled all exceptions of all parties to said Master's report and did direct that a decree be prepared upon the basis of the conclusions of law and findings of fact in the original and supplemental reports of the Master. And having entered an order formally consolidating said constituent causes into a consolidated cause, the District Court did render a single final decree of restitution on April 14, 1933, in which, among other things, the District Court did order, adjudge and decree:

(a) That the defendant Railroad Company ought to restore to the said Brooks-Scanlon Corporation, Cummer Cypress Company and Wilson Cypress Company, severally (complainants in constituent cause No. 511), and to said Wilson Lumber Company of Florida (complainant in said constituent cause No. 512), and to the said Florida Railroad Commission (complainant in constituent cause No. 514) for the use and benefit of the several shippers specified in said decree, the sums set opposite the names of such complainants and of such shippers, respectively, in said decree, such sums being the amounts (including principal and interest thereon at the rate of 8% per annum computed to April 14, 1934) which the District Court thereby found to have been lost by said complainants and shippers, respectively, by virtue of the failure of the District Court to enjoin and set aside in the first instance the order of the Interstate Commerce Commission which was afterwards enjoined and set aside by said District Court pursuant to the mandates of the Supreme Court of the United States; and

(b) That the said defendant pay to the complainants and said Florida Railroad Commission, severally, the said sums above referred to and that separate executions be issued to them respectively.

The contentions of the complainants are, as the District Court found them to be, that they are severally entitled to have restitution measured by the Cummer Scale, the District Court having no power to go behind it; but if not, that the restitution awarded to them respectively be measured by said common law standard, and that they were and are severally entitled to greater sums, respectively, than were awarded to them, respectively, by the said final decree.

IV.

Cases Sustaining Jurisdiction.

Baltimore & Ohio R. R. Co. v. *United States*, 279 U. S. 781;

Arkadelphia Milling Co. v. *St. L.-S. W. R. R. Co.*, 249 U. S. 134;

Florida v. *United States*, 282 U. S. 194.

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